

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

V.

**Valera Fooksman;
Maria Rutenburg;
Mr. Chau's Restaurant, Inc., a
California Corporation; and Does 1-
10.**

Defendants.

Case No.

Complaint For Damages And Injunctive Relief For Violations Of: American's With Disabilities Act; Unruh Civil Rights Act

Plaintiff Scott Johnson complains of Valera Fooksman; Maria Rutenburg; Mr. Chau's Restaurant, Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendants Valera Fooksman and Maria Rutenburg owned the real property located at or about 910 Woodside Rd., Redwood City, California,

1 between July 2018 and April 2019.

2 3. Defendants Valera Fooksman and Maria Rutenburg own the real
3 property located at or about 910 Woodside Rd., Redwood City, California,
4 currently.

5 4. Defendant Mr. Chau's Restaurant, Inc. owned Thaibodia Bistro located
6 at or about 910 Woodside Rd., Redwood City, California, between July 2018
7 and April 2019.

8 5. Defendant Mr. Chau's Restaurant, Inc. owns Thaibodia Bistro
9 ("Restaurant") located at or about 910 Woodside Rd., Redwood City,
10 California, currently.

11 6. Plaintiff does not know the true names of Defendants, their business
12 capacities, their ownership connection to the property and business, or their
13 relative responsibilities in causing the access violations herein complained of,
14 and alleges a joint venture and common enterprise by all such Defendants.
15 Plaintiff is informed and believes that each of the Defendants herein,
16 including Does 1 through 10, inclusive, is responsible in some capacity for the
17 events herein alleged, or is a necessary party for obtaining appropriate relief.
18 Plaintiff will seek leave to amend when the true names, capacities,
19 connections, and responsibilities of the Defendants and Does 1 through 10,
20 inclusive, are ascertained.

21

22 **JURISDICTION & VENUE:**

23 7. The Court has subject matter jurisdiction over the action pursuant to 28
24 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
25 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

26 8. Pursuant to supplemental jurisdiction, an attendant and related cause
27 of action, arising from the same nucleus of operative facts and arising out of
28 the same transactions, is also brought under California's Unruh Civil Rights

1 Act, which act expressly incorporates the Americans with Disabilities Act.

2 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
3 founded on the fact that the real property which is the subject of this action is
4 located in this district and that Plaintiff's cause of action arose in this district.

5

6 **FACTUAL ALLEGATIONS:**

7 10. Plaintiff went to the Restaurant in July 2018, March 2019 and April
8 2019 with the intention to avail himself of its goods, motivated in part to
9 determine if the defendants comply with the disability access laws.

10 11. The Restaurant is a facility open to the public, a place of public
11 accommodation, and a business establishment.

12 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
13 to provide accessible parking.

14 13. On information and belief the defendants currently fail to provide
15 accessible parking.

16 14. Additionally, on the dates of the plaintiff's visits, the defendants failed
17 to provide accessible restrooms.

18 15. On information and belief the defendants currently fail to provide
19 accessible restrooms.

20 16. Plaintiff personally encountered these barriers.

21 17. By failing to provide accessible facilities, the defendants denied the
22 plaintiff full and equal access.

23 18. The lack of accessible facilities created difficulty and discomfort for the
24 Plaintiff.

25 19. The defendants have failed to maintain in working and useable
26 conditions those features required to provide ready access to persons with
27 disabilities.

28 20. The barriers identified above are easily removed without much

1 difficulty or expense. They are the types of barriers identified by the
2 Department of Justice as presumably readily achievable to remove and, in fact,
3 these barriers are readily achievable to remove. Moreover, there are numerous
4 alternative accommodations that could be made to provide a greater level of
5 access if complete removal were not achievable.

6 21. Plaintiff will return to the Restaurant to avail himself of its goods and to
7 determine compliance with the disability access laws once it is represented to
8 him that the Restaurant and its facilities are accessible. Plaintiff is currently
9 deterred from doing so because of his knowledge of the existing barriers and
10 his uncertainty about the existence of yet other barriers on the site. If the
11 barriers are not removed, the plaintiff will face unlawful and discriminatory
12 barriers again.

13 22. Given the obvious and blatant nature of the barriers and violations
14 alleged herein, the plaintiff alleges, on information and belief, that there are
15 other violations and barriers on the site that relate to his disability. Plaintiff will
16 amend the complaint, to provide proper notice regarding the scope of this
17 lawsuit, once he conducts a site inspection. However, please be on notice that
18 the plaintiff seeks to have all barriers related to his disability remedied. See
19 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
20 encounters one barrier at a site, he can sue to have all barriers that relate to his
21 disability removed regardless of whether he personally encountered them).

22

23 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
24 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
25 Defendants.) (42 U.S.C. section 12101, et seq.)

26 23. Plaintiff re-pleads and incorporates by reference, as if fully set forth
27 again herein, the allegations contained in all prior paragraphs of this
28 complaint.

1 24. Under the ADA, it is an act of discrimination to fail to ensure that the
2 privileges, advantages, accommodations, facilities, goods and services of any
3 place of public accommodation is offered on a full and equal basis by anyone
4 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
5 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 6 a. A failure to make reasonable modifications in policies, practices,
7 or procedures, when such modifications are necessary to afford
8 goods, services, facilities, privileges, advantages, or
9 accommodations to individuals with disabilities, unless the
10 accommodation would work a fundamental alteration of those
11 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 12 b. A failure to remove architectural barriers where such removal is
13 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
14 defined by reference to the ADA Standards.
- 15 c. A failure to make alterations in such a manner that, to the
16 maximum extent feasible, the altered portions of the facility are
17 readily accessible to and usable by individuals with disabilities,
18 including individuals who use wheelchairs or to ensure that, to the
19 maximum extent feasible, the path of travel to the altered area and
20 the bathrooms, telephones, and drinking fountains serving the
21 altered area, are readily accessible to and usable by individuals
22 with disabilities. 42 U.S.C. § 12183(a)(2).

23 25. When a business provides parking for its customers, it must provide
24 accessible parking.

25 26. Here, accessible parking has not been provided.

26 27. When a business provides facilities such as restrooms, it must provide
27 accessible restrooms.

28 28. Here, accessible restrooms have not been provided.

1 29. The Safe Harbor provisions of the 2010 Standards are not applicable
2 here because the conditions challenged in this lawsuit do not comply with the
3 1991 Standards.

4 30. A public accommodation must maintain in operable working condition
5 those features of its facilities and equipment that are required to be readily
6 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

7 31. Here, the failure to ensure that the accessible facilities were available
8 and ready to be used by the plaintiff is a violation of the law.

9

10 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
11 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
12 Code § 51-53.)**

13 32. Plaintiff repleads and incorporates by reference, as if fully set forth
14 again herein, the allegations contained in all prior paragraphs of this
15 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
16 that persons with disabilities are entitled to full and equal accommodations,
17 advantages, facilities, privileges, or services in all business establishment of
18 every kind whatsoever within the jurisdiction of the State of California. Cal.
19 Civ. Code § 51(b).

20 33. The Unruh Act provides that a violation of the ADA is a violation of the
21 Unruh Act. Cal. Civ. Code, § 51(f).

22 34. Defendants’ acts and omissions, as herein alleged, have violated the
23 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s
24 rights to full and equal use of the accommodations, advantages, facilities,
25 privileges, or services offered.

26 35. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
27 discomfort or embarrassment for the plaintiff, the defendants are also each
28 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-

(c).)

36. Although the plaintiff was markedly frustrated by facing discriminatory barriers, even manifesting itself with minor and fleeting physical symptoms, the plaintiff does not value this very modest physical personal injury greater than the amount of the statutory damages.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: October 22, 2019

CENTER FOR DISABILITY ACCESS

By:



Amanda Seabock, Esq.
Attorney for plaintiff